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UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

JOSE ANGEL ORTEGA,)
Petitioner,) 3:09-cv-0646-RCJ-VPC
VS.	ORDER
BRIAN WILLIAMS, et al.,)
Respondents.	}
	/

Ortega has filed an amended petition and moved for a stay and abeyance under *Rhines v. Weber*, 544 U.S. 269 (2005). Respondents oppose the motion contending that the petition should be dismissed, that he has failed to demonstrate good cause of his failure to exhaust or that the claims are not plainly meritless. Petitioner has filed his reply.

Petitioner is an illiterate individual who does have a limited understanding and ability to speak English. He faces a lengthy sentence and raises claims that are not plainly meritless. His failure to exhaust his state court remedies was due to his lack of education and English language skills and the fact that he was not provided with the assistance of counsel after his direct appeal. With the assistance of court appointed counsel, petitioner should be able to return to the state court, exhaust his claims, and if he does not obtain relief there, return to this court for a review under 28 U.S.C. § 2254.

The Court finds petitioner has shown good cause for his failure to exhaust the grounds in his petition. Further, the Court finds that the claims raised are not clearly meritless and that petitioner has not been intentionally dilatory in pursuit of his claims. Petitioner shall be granted leave to return to state

court while having this action closed administratively, without judgment being entered.

IT IS THEREFORE ORDERED that the Motion for Stay (docket # 26) is GRANTED.

IT IS FURTHER ORDERED that the Clerk shall CLOSE THIS CASE ADMINISTRATIVELY, BUT SHALL NOT ENTER JUDGMENT.

IT IS FURTHER ORDERED that petitioner must return to state court within forty-five (45) days from entry of this Order.

IT IS FURTHER ORDERED that after he exhausts his state court remedies with respect to his unexhausted claims, petitioner may, within thirty (30) days of completion of his state action for collateral review, make a motion to reopen this action, under the same case number, and before the same undersigned United States District Court Judge. Should petitioner miss the deadlines imposed by this Order, the motion to reopen may be denied.

Dated this 20th day of September, 2010.

UNITED STATES DISTRICT JUDGE